

NORTH CAROLINA EDUCATION LOTTERY
ON-LINE LOTTERY GAMING SYSTEM QUESTIONS¹

1. (a) Is the NCEL or the Successful Vendor responsible for the cost of Background Investigations? (Sections 3.6 and 4.5)

G.S. §18C-151(a)(3) requires each proposal to be accompanied by “...the fee to cover the cost of the criminal record check...” The cost of such checks should be submitted with all proposals.

(b) If the Successful Vendor is responsible for these costs, please provide an estimate of such costs. (Sections 3.6 and 4.5)

Each Vendor (not just the Successful Vendor) must submit, with its Proposal, a check in an amount equal to the sum of:

(1) Three Thousand Five Hundred Dollars (\$3,500) (the “Corporate Search Fee”) for the Vendor;

(2) the Corporate Search Fee for any parent corporation of the Vendor;

(3) the Corporate Search Fee for any subsidiary of the Vendor that is bidding in connection with the Vendor on the Procurement described in the RFP;

(4) the Corporate Search Fee for EACH joint venture partner or subcontractor who will be paid twenty-five percent (25%) or more of the Proposed Contract amount and who is bidding with the Vendor on the Procurement described in the RFP; and

(5) Two Hundred Dollars (\$200) (the “Individual Search Fee”) for EACH officer and director of the Vendor and for each shareholder of the Vendor who owns an interest of five percent (5%) or more in the Vendor.

2. We have significant concerns about portions of Section 3.9 OWNERSHIP OF MATERIALS AND RIGHT TO USE. We understand the premise behind paragraphs 1 and 2 of this section, and believe that this language reasonably reflects the practices of our industry. However, with regard to these first two paragraphs, we respectfully ask the NCEL.

¹ The Questions are directly quoted from those timely submitted by potential Vendors in accordance with the RFP with the exception that potential Vendor’s names have been redacted from the Questions and multi-part questions have been divided into sub-parts.

(a) Whether it is the intention of the NCEL to direct or instruct the Successful Vendor what NCEL Intellectual Properties, as defined in this Section, the Successful Vendor may be asked to develop, produce or provide exclusively for the NCEL under the contract? (Section 3.9)

The NCEL expects to work closely and collaboratively with the Successful Vendor to determine what NCEL Intellectual Properties will be developed, how and when.

(b) Whether the NCEL will permit the Successful vendor to provide, under license from the NCEL, any of the NCEL Intellectual Properties to third party lotteries? (Section 3.9)

The NCEL has not decided this issue as of this date.

(c) And whether it is the intention of the NCEL that it will directly license any of the NCEL Intellectual Properties to any third party lotteries? (Section 3.9)

The NCEL has not decided this issue as of this date.

3. Paragraph 3 of Section 3.9, however presents a concept that is, in our view, completely new to lottery procurements. If we understand the intent of the language correctly, the Successful Vendor will be required to grant the NCEL a perpetual, royalty free license to use, sublicense the use of, modify and/or create derivative works of any and all of the very broadly defined “Vendor Licensed Intellectual Properties”. These “licensed” materials include, but are not limited to, any and all proprietary materials owned by the Successful Vendor, including its software, hardware, patents, copyrights, equipment, firmware, mask works, trademarks (and the goodwill associated therewith) used in connection with the System or the Successful Vendor’s performance of the proposed Contract with the NCEL. As we understand it, these will comprise any and all proprietary materials provided to the NCEL during the course of the Successful Vendor’s performance of the contract with you, even though not developed exclusively for the NCEL.

The NCEL proposes to own and use, without fee, proprietary materials currently owned by a Successful Vendor, or materials the Vendor might obtain in the future whether those materials are ever used or needed by the NCEL. The practical effect of this clause is that those intellectual properties which our company has developed over 30 years of business could be licensed to our competitors by the NCEL. We have seen language that resembles the third paragraph of Section 3.9 used when a lottery has purchased hardware or software systems directly from a lottery vendor and the lottery is seeking a level of protection in the event the system/hardware seller goes out of business and/or otherwise cannot support the sale. That is not the situation here, however. Our two primary concerns with this language are as follows: 1) The concept that all of the Successful Vendor’s proprietary materials which are merely provided to the NCEL during the course of the proposed contractual relationship can be used as the NCEL desires upon the expiration of any such contract, and without additional fee to the Successful Vendor for the use thereof, violates sound business practice and prohibits our company from providing lottery solutions that benefit the entire lottery industry, not just the NCEL; and 2) Of equal concern is that at the expiration of the contract these same proprietary materials could be used, modified, and/or sublicensed by the NCEL to our competitors so that they may fulfill their contractual

obligations to the NCEL. Accordingly, we respectfully request that the third paragraph of Section 3.9 of the on-line RFP issued by the NCEL either be deleted in its entirety or modified consistent with our comments above. (Section 3.9)

It is not the intention of the NCEL to be unreasonable or unfair or take advantage of any Successful Vendor. With due respect to this Vendor, the NCEL believes that the concept discussed in the third paragraph of Section 3.9 of the RFP is neither new to the lottery industry, nor is it a type of contractual arrangement that is unusual. In addition, licensors of intellectual properties routinely provide perpetual, royalty free licenses to licensees for their own use. Indeed, some of the most innovative and competitive creators of intellectual properties thrive with such relationships, all without prohibiting or inhibiting innovation.

The NCEL's obligation is to continue to provide safe, secure, enjoyable and entertaining lottery products and services that generate as many dollars as responsibly as possible consistent with its mission and the Lottery Act. The NCEL can not find itself in a position where, for whatever reason, the current Successful Vendor can preclude or interrupt the NCEL from offering its lottery game products and services to the citizens of North Carolina. Without a license, such a result might be possible.

For example, if the then-current Successful Vendor's contract is nearing an end and it is not selected as the new Successful Vendor for the next contract, the NCEL can not risk a situation in which the then-current lottery games, products or services might be interrupted if something were to temporarily prevent the new Successful Vendor from beginning its work. In addition, during the term of the Contract, the NCEL must have the license rights necessary to allow it to use, and potentially improve, the Vendor Licensed Intellectual Properties. The license called for by the NCEL merely protects it and the citizens of North Carolina from such risks.

At the same time, however, just because the license is royalty-free (emphasis added) does not necessarily mean that the Vendor whose intellectual properties are continuing to be used is precluded from being compensated, on a fair basis, for the continued use of their intellectual properties, products or services. Under the type of Contract the NCEL expects to sign, it will not pay any license fees for the use of the Vendor Licensed Intellectual Properties. It will, however, pay a percentage of net sales for the total bundle of goods,

services and Vendor Licensed Intellectual Properties provided by the Successful Vendor.

Accordingly, in the hopefully unlikely event that the NCEL can not get a replacement Vendor to provide a needed or desired good, service or intellectual property upon the termination of the then-current Successful Vendor's Contract, the NCEL can continue to provide its lottery products and services to the public using the existing Vendor Licensed Intellectual Properties provided through this license. Of course, in such instance, a mutually agreeable and fair compensation would be provided to the Vendor whose Vendor Licensed Intellectual Properties were being used. However, such compensation might not be the same percentage of net sales as is paid during the term of the Contract when the Successful Vendor was providing the entire suite of goods, services and intellectual properties beyond just the license of the Vendor Licensed Intellectual Properties.

By such an arrangement, the NCEL is assured that it will never be unable to legally provide its lottery game products and services to the public, and the Successful Vendor will receive fair compensation for any continued use of its Vendor Licensed Intellectual Properties, albeit not as a "royalty." Of course, in any such instance, the Confidentiality provisions set forth in Section 11 of the Proposed Contract would still protect the Confidential Information and Trade Secrets of the Successful Vendor, even if a new replacement Vendor began to serve the NCEL.

4. Trademark searches are not necessary for on-line lottery games. Will the NCEL be willing to delete this section? (Section 3.11)

No, respectfully, your statement is incorrect. For example, Powerball® is a registered trademark for an online game that is owned by the Multi-State Lottery Association; MEGA MILLIONS® is a registered trademark for an online game owned by the Illinois Department Of Revenue, Lottery Program State Agency; Fantasy 5® is a registered trademark for an online game owned by State Of Florida, Department Of The Lottery a/k/a Florida Lottery State Agency.

To the extent that the NCEL seeks to introduce or market an online game using a trademark, it will be the Successful Vendor's responsibility to clear such a mark before use. It is of benefit to both the Successful Vendor and the

NCEL to ensure that no new NCEL lottery online game infringes the intellectual property rights of any third party.

5. We interpret this section to require disclosure of open, pending litigation. Is this correct? (Section 4.6)

No, that is not correct. For example, G.S. § 18C-151 (a)(5) and G.S. §§18C-152(c)(5) and (6) (which are specifically referenced in Section 4.6 of the RFP) require disclosure of matters which may no longer be open or pending, and in some cases may have occurred ten (10) or more years ago. Complete disclosure in this area is critical and should not be taken lightly so that the NCEL may undertake a careful and thorough investigation of the integrity and past and present practices of each Vendor. If in doubt, disclose it.

6. If a Vendor is a subsidiary company, will audited consolidated financial statements of the Vendor's parent company fulfill this RFP requirement? (Section 4.8 – page 16.)

The NCEL seeks to understand the financial position of the party with whom it is contracting. If the Vendor is a wholly owned subsidiary of another company and all of the Vendor's financial statements are fully consolidated with its parent corporation, the audited financial statements of the parent corporation may be supplied; provided, however, in such case, if there are no fully audited financial statements of the Vendor itself, the NCEL may require the parent corporation whose financial statements have been provided to either guarantee the obligations of the Vendor or sign the Contract and be jointly and severally liable with the Vendor or some other such arrangement, in the discretion of the NCEL.

7. How much space will NCEL provide to the Successful Vendor for the primary data center at NCEL's headquarters? (Section 5.1.1.1)

The Successful Vendor will need to locate its own space, consistent with the restrictions of Section 5.1.1.1 of the RFP, as the NCEL may not be in a permanent location for another six (6) months.

8. Will NCEL provide infrastructure requirements (Security system, generator, UPS, etc.) if the primary data center is located at NCEL headquarters? (Section 5.1.1.1)

No, see Answer to Question 7.

9. How much will NCEL charge vendors if the primary data center is at NCEL headquarters? (Section 5.1.1.1)

Not Applicable, see Answer to Question 7.

10. If the NCEL does not approve the Vendor's proposed back-up site, will NCEL accept an adjustment to the Vendor's cost proposal (increase or decrease) caused by NCEL's non-approval of the proposed back-up site? (Section 5.1.1.1)

No. However, if for some reason the NCEL does not accept the Successful Vendor's proposed back-up site, the NCEL will work with the Successful Vendor to identify a suitable site that does not materially increase the cost.

11. Will a single programmer capable of supporting both the gaming system and lottery back-office management system fulfill this RFP requirement? (Section 5.1.4)

No.

12. (a) Does the Lottery require a third party to provide the ICS software? (Section 5.1.6)

Yes, the NCEL requires the Successful Vendor to procure an independent ICS system, software and services from a reputable vendor that is currently doing business with lotteries in the United States. The selected ICS vendor will report to the NCEL and be accountable to the NCEL. The NCEL reserves the right at any time to require the Successful Vendor to assign the ICS vendor contract to the NCEL with the Successful Vendor continuing to remain liable for all sums due under such contract even after any such assignment.

(b) If so, should the cost of the ICS software be included as part of the Vendor's base price? (Section 5.1.6)

Yes.

13. For the initial training of retailers during the start-up of the Lottery, will NCEL accept on-site training of retailers in combination with classroom training? (Section 5.2.1)

No, however the NCEL will accept on site training in addition to required classroom training.

14. The cost proposal seems to be an inappropriate place to describe the Vendor's solution for providing portable terminals and thermal branding for all image readers.

How will NCEL include these items in the technical evaluation if they are described in the cost proposal? Should these items be described in the Vendor's response to RFP section 5.1.2.1 rather than 6.5? (Section 6.5)

Your point is well taken. This requirement was inserted into Section 6.5 of the RFP to ensure that the cost proposal included these devices. Nevertheless, the Vendors should submit as much information about their solution for providing portable terminals for promotional events and programmable thermal branding for all image readers in the portion of their Proposals which addresses the requirements of Section 5.1.2.1 of the RFP.

15. Benchmarks. It is vitally important that the NCEL actually see the proposed technical solutions as detailed in the proposals. Is it possible for the NCEL to denote a timeframe that it will use for conducting site visits or corporate benchmarks? For example, "week of ...?" (Evaluation)

The NCEL has reserved the right to conduct site visits but has not committed to do so. Vendors should not assume that site visits will be conducted, and thus should include as much information as is reasonably possible about their proposed solution in their Proposals. By requiring that any lottery gaming system that is proposed be currently operational, the NCEL has reserved the right to check with the lottery at which such solution is in operation to obtain an unbiased assessment of its performance if the NCEL Evaluation Committee feels that such a reference check would be helpful. Again, such a reference check is not required but may be performed in the discretion of the NCEL. If the NCEL Evaluation Committee determines that site visits for one or more Vendors would be helpful or required, the appropriate representative of the NCEL will contact the appropriate contact person at the relevant Vendor(s) and make arrangements as efficiently as possible given the timetable adopted by the NCEL. Vendors should be prepared to offer a site visit at any time during the evaluation period.

16. The NCEL makes it clear that approximately five (5) regional offices that support management terminal or management terminal-level access and check printing capability are to be installed. Can the NCEL please provide a date by which these locations will be identified so that the successful vendor may have adequate time to install the required communications circuit(s)? (Section 1.1, p. 2; Section 5.1.2.2, p. 40)

Rest assured that the NCEL is working as diligently and responsibly as possible on this and will notify the Successful Vendor as soon as possible. No specific timetable is available at this time.

17. All Proposal data, materials and documentation generated, originated and prepared and submitted to the NCEL pursuant to the RFP shall belong exclusively to the NCEL. Would the NCEL please confirm that it would own the copyright to any Proposal documentation generated, first originated and prepared for the NCEL, but not the underlying proprietary information owned or licensed by the Vendor used to create such materials? (Section 1.5, p. 4)

Yes.

18. Section 1.9 provides that Proposals shall remain valid for 180 days following the Proposal Deadline. Section 1.9 references Attachment A (Vendor Certification), which provides in item 6 that the Vendor agrees that any deviation in Vendor's Proposal from the RFP may be a basis for rejection. Section 3.2 provides that, "if a Vendor has any changes it desires to make to the Proposed Contract, it must provide the exact wording of such changes and a redlined revised version of the Proposed Contract for the NCEL's consideration as part of the Vendor's Proposal," or be stopped from further negotiating the Contract if selected as the Successful Vendor. Could the NCEL please confirm that submission of a redlined Proposed Contract as part of its Proposal would not result in Vendor's Proposal being considered deviant from the RFP? (Section 1.9)

Section 3.2 of the RFP specifically invites any changes that the Vendor would like to suggest to the Proposed Contract to be provided to the NCEL. Complying with this Section will not result in the Vendor's Proposal being "considered deviant." However, the NCEL believes the Proposed Contract fairly represents the requirements it is seeking to procure and represents a reasonable allocation of risk. Thus the number of proposed changes, and the significance or perceived materiality of such proposed changes, may be evaluated and considered by the NCEL as one factor in determining who is ultimately selected as the Successful Vendor.

19. Besides Attachment A, item 6, various other provisions of the RFP create uncertainty as to the extent to which Vendors may propose terms which vary from the RFP requirements without risking rejection. Specifically, Section 4.2 (Statement of Understanding) states that "any deviation from any (RFP) requirement . . . may cause its rejection as a (sic) non-responsive to this RFP." In contrast, Section 2.6 (Proposal Format) states that "the words 'shall,' 'must,' 'will,' and words of similar import denote material and essential requirements of this RFP;" and that the "failure to comply with any material and essential requirement may result in a rejection of a Proposal in the sole discretion of the NCEL." And, Section 2.11 (Proposal Evaluation) states in subsection 2.11.1 (Introduction) that "it is not the intent of the NCEL to disqualify any Proposal based on minor technicalities." Will the NCEL please confirm that a responsible Vendor's Proposal will not be rejected unless it fails to meet a "material and essential requirement?" (Section 1.9, p. 6; Section 3.2, p. 17)

No, the NCEL does not believe all of the cited language from the RFP to be either inconsistent or unclear. Nor does the NCEL believe these provisions

are different from what the Vendors will have seen in virtually every other state lottery procurement.

As Section 2.6 of the RFP states: "... failure to comply with any material and essential element may result in a rejection of a Proposal in the sole discretion of the NCEL." But Section 4.2 of the RFP is intended to go further to state that any deviation from any requirement may cause a proposal to be rejected as non-responsive to the RFP. In the most stringent statement, the NCEL admonishes in Attachment A (the Vendor Certification) that any deviation from the requirements of the RFP may be the basis for rejection of a Proposal. The NCEL also states in Section 2.11.1 of the RFP that it is not its intent to disqualify any Proposal based on minor technicalities. Yet, in that same Section, the NCEL clearly and unequivocally "...reserves the right to determine if a particular deficiency or inadequacy is significant enough to disqualify the Proposal and Vendor."

The NCEL intends to act responsibly and fairly. Vendors are respectfully but strongly encouraged not to deviate from the requirements of the RFP. If they do deviate, the NCEL reserves the right to determine the consequences of such deviations.

20. Will the NCEL please clarify whether, as part of any negotiation conducted in accordance with this section, the several Vendors with whom the NCEL is negotiating may be invited to submit Best and Final Offers? (Section 2.16, p.17)

Vendors should not assume that negotiations with them will take place. Thus, they should offer their best price, best value and best other Proposal elements in their submitted Proposal or risk that their "best and final offers" will not be presented or considered. The NCEL has reserved certain negotiation and other rights in the RFP, including Section 2.16, and may or may not exercise any of such rights in its sole discretion. If any such negotiations take place, a Vendor may be given the opportunity to alter any portion of its Proposal that is the subject of the negotiations. However, because every Vendor has the same opportunity to include their best offer in their Proposal, no Vendor can complain if they failed to offer their best offer in the Proposal they submit.

21. Section 3.9 First Paragraph - Would NCEL entertain a clarification that, for purposes of this Agreement, the definition of Vendor Licensed Intellectual Property is intended to apply to the software, hardware, patents, copyrights, equipment, firmware, mask works, trademarks (and the goodwill associated therewith), products, materials, intellectual properties, data, documentation, approaches, systems, programs, methodologies and concepts that are owned by

Vendor as of the Effective Date of the Contract, to the extent they will be used by Vendor in its performance of such Contract, as well as any and all derivative works thereof. NCEL Intellectual Properties is intended to apply to software, hardware, patents, copyrights, equipment, firmware, mask works, trademarks (and the goodwill associated therewith), products, materials, intellectual properties, data, documentation, approaches, systems, programs, methodologies and concepts that are owned by NCEL prior to the Contract, as well as any and all modifications derivative works of the NCEL Intellectual Properties that are first conceived and produced by Vendor under the Contract, or which are developed by NCEL at any time? (Section 3.9)

No, the NCEL does not understand what distinction this Vendor is intending to draw from the existing language of the RFP and the Proposed Contract. The NCEL remains satisfied with the definitions it has included in the RFP and believes them to be fair and reasonable. In addition, this Vendor is referred to the NCEL's Answer to Question 3.

22. Section 3.9 Third Paragraph - Would NCEL entertain the following clarifications (which are intended to be consistent with the first paragraph as clarified by this Vendor): The license being granted by the Successful Vendor to NCEL is a perpetual, royalty-free, personal and non-transferable license under Vendor Licensed Intellectual Properties to permit NCEL to modify and create derivative works of NCEL Intellectual Properties solely for NCEL's own use as part of NCEL's System, and nothing contained in this provision is intended to require that Successful Vendor grant any third party any rights or licenses under Vendor Licensed Intellectual Properties, especially with respect to any U.S. patents that the Successful Vendor holds with respect to any aspect of the subject System. In addition, and consistent with NCEL's ownership of NCEL Intellectual Properties and Vendor's ownership of Vendor Licensed Intellectual Properties, NCEL will have all rights incident to ownership of the NCEL Intellectual Properties, including the right to modify and prepare derivative works thereof, and Vendor will have all rights incident to Vendor's ownership of the Vendor Licensed Intellectual Properties, including the right to modify and create derivative works thereof. Vendor would be prepared to place into escrow what is its usual and customary practice to deposit for all of its lottery customers in the US. (Section 3.9, p. 19)

No, the NCEL does not understand what distinction this Vendor is intending to draw from the existing language of the RFP and proposed Contract. In addition, this Vendor is referred to the NCEL's Answer to Question 3. The escrow requirements are spelled out in the last sentence of Section 3.9 of the RFP without knowledge of, or without regard to, what this Vendor's "usual and customary" deposit practices are for its other lottery customers.

23. Would NCEL entertain a clarification that the intent of this provision is to ensure that the Successful Vendor will not perform its obligations under the Contract in conscious disregard of any patent, copyright, trademark, service mark or trade secret which Vendor knows will be infringed or misappropriated as a result of such performance? (Section 3.10, p. 20)

No, the NCEL does not understand what distinction this Vendor is intending to draw from the existing language of the RFP and proposed Contract. If by inserting the words “conscious disregard” the Vendor is seeking to lower its standard of indemnity to cover only knowing infringements, such a modification (interpretation) is not an acceptable allocation of risk between the NCEL and the Vendor.

It is the Vendor, and not the NCEL, that has created and is offering its unique online gaming system. Thus, it is the Vendor that must ensure that the system and solutions it provides do not infringe the intellectual property or other rights of third parties. If such an infringement were to occur, as between the NCEL, which has had nothing to do with the creation or implementation of the infringing item, and the Vendor, which created and implemented the infringing item, the risk (and indemnification obligation) will naturally and properly fall upon the Vendor.

24. Would NCEL entertain a clarification that the requirement for conducting trademark and service mark searches applies only to trademarks and service marks proposed by Successful Vendor? (Section 3.11, p. 20)

No, Section 3.11 of the RFP clearly states that the Successful Vendor will conduct searches for ALL (emphasis added) game names used during the term of the Contract. Thus, regardless of whether the Successful Vendor or the NCEL proposes or provides an online game, the Successful Vendor must ensure that any trademark associated therewith does not infringe the trademarks or other rights of third parties. See also the Answer to Question 4.

25. Would NCEL entertain a clarification that Vendor’s obligations under this provision are not intended to apply to any suits, damages, expenses, losses, liabilities or claims of any kind insofar as they result from modifications or adaptations made by NCEL or any third party to NCEL Intellectual Properties, or to modifications or adaptations made by Vendor to Vendor Licensed Intellectual Properties insofar as such suit etc. resulted from Vendor’s compliance with NCEL’S requirements, or from any use of the Vendor Licensed Intellectual Properties not authorized by the Contract? (Section 3.12, p. 21)

No, the suggested modification seems to unfairly limit the indemnification protection of the NCEL. For example, the suggested modification would not protect the NCEL in the case where it may have created a generic requirement for software but where the Successful Vendor may have actually created an infringing work or where the Successful Vendor created something which it knew, or should have known, was infringing. The NCEL is relying on and looking to the Successful Vendor as an expert in lottery gaming systems to use its substantial expertise, greater resources and more significant experience to help ensure that infringements do not occur. Obviously, the NCEL is not seeking to be indemnified for specific actions it may take on its own, having nothing to do with the goods, services systems, intellectual properties, assets or recommendations provided by the Successful Vendor and having nothing to do with the Contract.

26. These provisions provide a 72-hour period to cure breaches of certain, “major” contract terms and 30 days to cure other breaches. Would the NCEL allow for an extended cure period for breaches of other than major contract terms, by amending the Proposed Contract to provide that if such breach is of a type that cannot reasonably be cured within thirty (30) days and Successful Vendor is diligently attempting to cure such breach, then such breach shall continue for ninety (90) days after prior written notice from the NCEL? (Section 3.14, p. 22; Item 19, p. 18)

No, however, the NCEL is free to waive a right of termination it has in an appropriate instance in its discretion. Thus, if all other aspects of the Contract and relationship between the Successful Vendor and the NCEL are positive and going well, while it may have the right to terminate a Contract, the NCEL is not bound to do so and may, in its sole discretion, grant an extension or temporary one time waiver or some other remedy short of termination. The NCEL has no desire to prematurely change an otherwise satisfactory gaming system Vendor if it can be avoided.

27. Would NCEL entertain a clarification that Vendor’s obligations under this provision to indemnify NCEL are not intended to apply to any suits, damages, expenses, losses, liabilities or claims of any kind insofar as such suit, etc. resulted from Successful Vendor’s actions or omissions requested by or in compliance with NCEL’s requirements? (Section 3.17, p. 23)

No such modification (clarification) will be granted since the indemnification provided for in Section 3.17 of the RFP indemnifies the NCEL (and related parties) from the actions or omissions of the Successful Vendor (or its related parties). The Successful Vendor should not take actions which would create liability for the NCEL, but if the Successful Vendor does, then the NCEL will

look to the Successful Vendor to provide such indemnification. However, please also see the Answer to Question 25.

28. (a) Is there a specific bond form to be used for the Bid and Performance Bonds? (Section 3.19, p. 23)

See RFP Section 3.18.

(b) Are industry-standard forms acceptable? (Section 3.19, p. 23)

Yes.

29. The initial bond required to be filed with the Proposal appears not to be subject to release after contract award and expiration of the award protest period. Will the NCEL amend the RFP to allow the preliminary bond to be released once the Performance Bond is in place, since the purpose of the initial bond would be adequately met by the performance bond? (Section 3.19, p. 23)

The initial bid bond that is posted by the Successful Vendor upon submission of its Proposal is intended to be replaced (after Contract award and the expiration of all applicable protest periods) by the Successful Vendor's performance bond or letter of credit called for in Section 3.19 of the RFP. For purposes of determining the amount of the initial bond that must accompany the Proposal pursuant to G.S. §18C-151(a)(3), each Vendor should deliver a bond with its Proposal in the amount of Fifteen Million Dollars (\$15,000,000).

30. In the insurance marketplace sometimes coverages may become commercially unavailable or cost prohibitive. We respectfully request that the NCEL delete the third bullet at the top of the page 24 under Section 3.20, which states that "Such other types and amounts of insurance as the NCEL shall from time to time reasonably require." (Section 3.20, p. 24)

The NCEL has already acknowledged in Section 3.20 of the RFP that any additional coverages will need to be reasonably required and it understands that if a particular coverage is not available it can not be required. The NCEL does not know of any additional coverages it will require at this time. However, it can not predict the future of what might be required under the Lottery Act or otherwise over the intended seven (7)-year term of the Contract and so it must protect itself. The NCEL nevertheless fully intends to act reasonably and work cooperatively with the Successful Vendor in such a case.

31. Would the NCEL please clarify that the requirement for Crime Insurance is to evidence Employee Dishonesty Coverage? (Section 3.20, p. 24)

Yes.

32. News releases pertaining to the RFP Procurement or the Contract must not be made without the express prior written consent of the NCEL. Would the NCEL amend this Section of the RFP to allow a limited exception for disclosures which are required by applicable law? (Section 3.24, p. 25)

No. The NCEL is a public body with both statutory and operationally self-imposed obligations. Accordingly, it can not conceive of a circumstance when the Successful Vendor will be legally required to issue a news release or participate in a media interview where the NCEL wouldn't also be legally compelled to do so and thus would act in cooperation with the Successful Vendor. If in fact disclosures regarding the RFP, Procurement or the Contract are absolutely required by law, then the Vendor would need to do what it is legally required to do; however, under RFP Section 3.24 the NCEL still must have the opportunity to review and approve of the contents of said news release prior to any public dissemination.

33. Should the Successful Vendor become unable to perform the Contract other than because of NCEL's breach, the NCEL shall acquire a right in all property used by the Successful Vendor to perform the Contract and which is necessary to provide such services. Would the NCEL entertain amending this section of the RFP to provide that this usufruct right will survive for the duration of the Contract or until such time as the Successful Vendor becomes able to provide the services again, whichever is sooner? (Section 3.29, p. 26)

No amendment is offered or believed necessary. The usufruct right is meant to protect the NCEL in much the same way, and under possibly similar circumstances, as the intellectual property licenses and rights granted in Section 3.9 of the RFP. Thus, the Vendor is referred to the Answer to Question 3 for guidance as to how and when the usufruct is intended to be used if needed. Of course, once the Successful Vendor is timely and properly performing all of its services and other obligations under the Contract, the usufruct rights are superfluous.

34. If the vendor's parent company is a publicly held corporation, would you please confirm that the Appendix D and E forms do not need to be completed for a 5% or more stockholder of the parent company that is simply an institutional investment management firm that holds the parent company's shares in accounts for its clients, none of which own 5% or more of the parent company's stock, i.e., the institutional investment management firm has nominal ownership but

does not have the benefit of true ownership, such as the right to receive dividends or to vote its shares in any capacity other than as a proxy for its clients? (Section 4.5, p. 28)

G.S. §18C-151(c)(3) requires that a thorough background investigation be conducted of: “All shareholders with a five percent (5%) or more interest in the Vendor or parent or subsidiary corporation of the Vendor to whom the contract is awarded.” The NCEL does not see any exemption in the statute for an institutional investment management firm that holds five percent (5%) or more of the Successful Vendor’s parent company ownership interests; provided, however, if either the interests are titled in the name of the individual clients or the individual clients have the beneficial attributes of ownership thereof (e.g., the right to control who votes them, the right to receive distributions, etc.), then it appears that the applicable statute applies to only such true or beneficial owners of the interests who individually own five percent (5%) or more.

35. Vendors must provide a complete disclosure of any civil or criminal litigation or indictment involving such Vendor. Without a materiality threshold, disclosure of all litigation involving public company Vendors would be voluminous. Would the NCEL entertain amending this Section to require Vendors to disclose all material litigation? (Section 4.6, p. 28)

No, the NCEL can not legally do so. G.S. § 18C-151 (a)(5) and G.S. §§18C-152(c)(5) and (6) (which are specifically referenced in RFP Section 4.6) do not contain materiality limits (other than the exception for minor traffic violations). Moreover, understanding the litigation to which a Vendor is a party (including how voluminous it is) might provide potentially valuable insights about the Vendor that the NCEL might find relevant in determining whether or not this Vendor is reliable, has integrity, implements sufficient security, is financially solvent, has a proper track record with respect to minority businesses, might be on the verge of bankruptcy, is being investigated by government agencies on matters that the NCEL would consider relevant and many other areas. As a result, the NCEL believes that complete disclosure in this area is critical and should not be taken lightly so that the NCEL may undertake a careful and thorough investigation of the integrity and past and present practices of each Vendor.

36. (a) When does the NCEL plan to release the list of retailers expected to be installed for go-live (4/5/06) to the successful bidder? (Section 5.1.1.1, p. 36)

The NCEL will provide an ongoing list of approved retailers as soon as possible to the Successful Vendor.

(b) Will all of the retailers contained within the list be approved and ready for installation scheduling? (Section 5.1.1.1, p. 36)

The NCEL will provide an ongoing list of approved retailers to the Successful Vendor. The NCEL cannot predict if they will all be ready for installation.

37. Would the NCEL clarify why there is a required interface for receiving and processing pack status data and retailer maintenance data from the Instant Ticket vendor when there is not system required of the Instant Ticket vendor? (Section 5.1.1.3, p. 38)

This Question seems to intertwine the first and second sentence of this RFP Section. The interface requirement is to “provide” (or send), not receive, pack status data and certain retailer maintenance data to the NCEL and Instant Ticket Successful Vendor. (emphasis added) RFP Section 5.1.1.3 states that the Online Successful Vendor will be required “to receive and process” instant ticket game inventory and other data from the Instant Ticket Successful Vendor. (emphasis added) The Online Successful Vendor will need to interface with the Instant Ticket Successful Vendor’s distribution and other systems. The NCEL has also added the following item as Answer 29(c) to the Instant Ticket Lottery Game Services RFP Answers to Questions:

“(c) The RFP is amended by adding the following additional sentence as the first sentence of Section 5.9 of the RFP:

The Successful Vendor under this Instant Ticket Lottery Game Services RFP will work in cooperation with the NCEL and the Online Lottery Gaming System Successful Vendor in implementing certain system interfaces for the purpose of processing instant ticket game inventory data and retailer maintenance data and other information.”

In addition, see Answer 44(d) below.

38. It is stated that “The NCEL reserves the right to assume control of the network at any time during the Contract period.” If the NCEL’s intent of “control” includes ownership, the network represents substantial capital outlay on the part of the vendor. Can it be assumed that should the NCEL exercise its right to control the network, it will provide fair and reasonable compensation to the vendor? (Section 5.1.3, p. 41)

The purpose of this provision was not to suggest that the NCEL intended to generally assume permanent control of the network, but rather was related to the previous sentence and identified one possible result of the Successful

Vendor failing to take appropriate security measures to prevent unauthorized access to the network. See also the Answer to Question 3.

39. The RFP states that “The proposed communications network must be operational in an existing lottery jurisdiction.” Can the NCEL please clarify if the intent of this statement is understood to be operational in an existing lottery jurisdiction prior to the proposal submission deadline of January 13th, 2006? (Section 5.1.3, p. 41)

The intent of this requirement is that the proposed communications network must already be operational in an existing lottery jurisdiction at the time of the Proposal submission deadline.

40. Fixed Format is an older style format for receipts. All other domestic sites (except TN) use a variable style format for receipts which reduces costs, is easier for players to handle and results in less roll changes for retailers. Is the NCEL adamant about using this format or could we entertain using variable-length tickets? (Section 5.3.4, p. 49)

Contrary, to RFP original Section 5.3.4, the NCEL will consider a variable style format. PLEASE NOTE: A Vendor’s Proposal will not be considered to be non-conforming merely because it offers a variable style format.

41. The NCEL has requested that vendors describe solutions for portable promotional event terminals. Could the NCEL provide guidance on how many of these terminals it anticipates to be in use simultaneously? (Section 6.5, p. 55)

The NCEL currently anticipates there will be 10 such terminals.

42. Will the NCEL allow the online vendor to optionally propose and provide the Warehousing, Distribution, Marketing Services and ITVMs that are requested in the Instant Ticket RFP? (General)

Every Vendor is encouraged to bid on the Instant Ticket Lottery Game Services RFP (the “Instant Ticket Services RFP”) which the NCEL has issued. Copies of this Instant Ticket Services RFP can be obtained from the NCEL Website. If a Vendor is unable to submit a fully responsive bid to all elements of that procurement, it is encouraged to seek out other entities, joint venturers, partners, contractors or subcontractors to supply all of the goods and services required by that procurement.

The NCEL has decided to adopt best industry and best business practices to secure a fully integrated supply chain solution for its instant ticket products. The NCEL believes this proven method, used by industry leaders and best in

class businesses, most efficiently and effectively allows the product (in this case instant lottery game tickets) to be handled and moved through the supply chain from the manufacturer to the ultimate seller, the retailer.

By implementing this fully integrated supply chain solution, the NCEL accomplishes many key objectives, including:

(1) providing the most cost-effective and efficient instant ticket solution to the State of North Carolina without requiring the NCEL to incur substantial additional overhead and costs in staffing up to manage separate contracts for multiple instant ticket manufacturing Vendors, warehousing Vendors, distribution Vendors and delivery Vendors and without putting the NCEL in the middle of potential multi-Vendor disputes that can best be handled by the bidding teams themselves allowing the NCEL to only have to hold the successful Vendor accountable or liable;

(2) providing a unique and positive opportunity for minority businesses to partner, joint venture or subcontract with lottery industry companies, thus helping to achieve the NCEL's and Lottery Act's stated objectives, as well as the Vendor requirement in the RFP, to provide meaningful minority business participation in all of its major procurements and helping to share the revenues from these contracts with North Carolina minority businesses and their employees and owners;

(3) providing a unique opportunity for North Carolina companies to partner or contract with out of state lottery industry companies to provide portions of the fully integrated supply chain solution and thus share the revenues generated from these contracts with North Carolina citizens;

(4) better ensuring complete security for the instant ticket lottery game products by having experienced instant ticket manufacturing companies who already have great expertise in properly securing these tickets (as they currently do in their printing plants) as they move through the supply chain assume either direct or indirect responsibility for this important requirement; and

(5) helping to provide the best proposal that maximizes the benefits to the State of North Carolina, includes the greatest integrity, professionalism, reliability and security, and helps raise the greatest amount of money as

responsibly as possible for the North Carolina State Lottery Fund and its stated educational objectives.

For these reasons, and many others, the NCEL has chosen the best practices approach of a fully integrated supply chain solution for its instant ticket manufacturing, warehousing and distribution as demonstrated by its Instant Ticket Services RFP. Since existing lottery Vendors would not have already necessarily had all of such manufacturing, warehousing and distribution capabilities in the State of North Carolina prior to the creation of the NCEL, a level playing field is available to all Vendors who can all establish such networks or teams.

43. The Lottery has asked us to submit a redlined version of the Proposed Contract (Exhibit A to the RFP) but the RFP provided is in a PDF format which does not allow edits to the text. Would the Lottery provide a WORD version of the RFP to allow this Vendor to redline the Proposed Contract in a readable way? (General)

Yes, see item 44(b) below.

44. **THESE ADDITIONAL CLARIFICATIONS AND SUPPLEMENTAL INFORMATION, AMENDMENTS OR ADDITIONS TO THE RFP ARE PROVIDED BY THE NCEL AND ARE HEREBY INCORPORATED THROUGH THESE ANSWERS INTO THE RFP AND CONTRACT:**

(a) The following sentence should be added to the end of Section 3.20 of the RFP:

The Successful Vendor shall provide the NCEL with certificates of insurance within ten (10) days after the Contract date and evidence of any renewed bonds or insurance policies within five (5) days prior to the expiration of then existing bonds or insurance policies during the term of the Contract.

(b) A Microsoft Word version of the current version of the Proposed Contract (including any clarifications provided by these Answers) will be placed on the NCEL Website to facilitate the Vendors providing a redline showing any of their suggested changes. Any suggested changes (deletions, additions or moves) made to the proposed NCEL latest version of the Proposed Contract must be clearly indicated in any submission by a Vendor (preferably in color).

(c) The existing second sentence of the second paragraph of RFP Section 5.4 (page 50) should be replaced with the following sentence:

“The NCEL will require the Vendor to have a (Statement of Auditing Standards) SAS No. 70 (Type 2) audit conducted and report prepared at intervals established by the NCEL (but not more frequently than annually), as well as any additional audits of the Successful Vendor’s System or operations required by G.S. §18C-122 and the Act, all at the Vendor’s expense and completed by an independent certified public accounting firm to be selected and approved by NCEL.”

(d) The following sentence should be added as the first sentence of Section 5.1.1.3 of the RFP:

“The Successful Vendor under this Online Lottery Gaming System RFP will work in cooperation with the NCEL and the Instant Ticket Lottery Game Services RFP Successful Vendor in implementing certain system interfaces for the purpose of processing instant ticket game inventory data and retailer maintenance data and other information.”